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Etienne Girard and Françoise Fenelon Vidal, Citizens of France,

versus

The Mayor, Aldermen, and Citizens of Philadelphia, and Others.

BILL IN CHANCERY,

FILED IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR

THE PENNSYLVANIA DISTRICT,

ON BEHALF OF THE HEIRS

OF THE

LATE STEPHEN GIRARD, ESQ.

*To recover all the Real and Personal Estate of the Testator, left to
the Corporation in trust, with the exception of the sum
devoted to the improvement of Delaware Avenue.*

PHILADELPHIA:
PUBLISHED BY ROBERT DESILVER,
No. 110 Walnut Street.

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1836.



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TO THE HONOURABLE

The Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania, sitting in equity.

Humbly complaining,

Showeth, unto your honours, your orator and oratrix, Etienne Girard and Françoise Fenelon Vidal, aliens to the United States of America, and citizens and subjects of the Monarchy of France, that Stephen Girard, late of the City of Philadelphia, in the State of Pennsylvania, banker and merchant, a native born subject of the former kingdom of France, but at the time of his death, and for more than fifty years preceding, a citizen of the United States, and of Pennsylvania, and there domiciled, departed this life at Philadelphia aforesaid, on the twenty-sixth day of December, in the year One Thousand Eight Hundred and Thirty-one, having first duly made and published his last Will and Testament, bearing date on the sixteenth day of February, One Thousand Eight Hundred and Thirty, with a certain writing thereto annexed, bearing date on the twenty-fifth day of December in the same year, purporting to be a republication thereof, also a certain other paper writing purporting to be a codicil to his last will and testament, and a second republication thereof, bearing date on the twentieth day of June, One Thousand Eight Hundred and Thirty-one, of which last will, &c., the said testator therein and thereby appointed Timothy Paxson, Thomas P. Cope, Joseph Roberts, William J. Duane, and John A. Barclay, the Executors, all of whom duly proved the said will, &c., obtained letters testamentary thereon, and took upon themselves the burden of the execution thereof, and all of whom were and yet are citizens of the State of Pennsylvania aforesaid, and your orator and oratrix pray they may be made defendants to this Bill. That the said testator, in and by the said will, after sundry legacies and devises, of very inconsiderable value and amount, compared with the bulk of his estate, to his next of kin and heirs at law, and after sundry other legacies and devises to various other persons and institutions, corporate and unincorporate, devises and bequeaths to the Mayor, Aldermen, and Citizens of Philadelphia, [all of whom are citizens of the State of Pennsylvania aforesaid, and who your orator and oratrix pray may be made defendants to

this Bill] their successors or assigns, two undivided third parts of certain large and valuable estates in Louisiana, and in addition thereto, all the residue and remainder of all his real and personal estate of every sort and kind whatsoever situate in trust to and for the several uses, intents and purposes mentioned and declared of and concerning the same in the said will, and so far as regards his real estate in Pennsylvania, in trust, that no part thereof shall ever be sold or alienated by the said Mayor, Aldermen and Citizens of Philadelphia or their successors, but that the same be forever thereafter, let from time to time, to good tenants, at yearly or other rents, and upon leases of not more than five years' duration; and that the rents, issues and profits thereof, be applied towards keeping that part of the real estate situate in the City and Liberties of Philadelphia, constantly in good repair, and towards improving the same whenever necessary, by erecting new buildings, and that the net residue of such rents and profits [after paying the several annuities in the said will before provided for] be applied to the same uses and purposes as are in the said will declared of and concerning the residue of his personal estate, and so far as regards his real estate in Kentucky, in trust, to sell and dispose of the same, whenever expedient to do so, and apply the proceeds to the same uses and purposes declared of the residue of his personal estate as aforesaid; that among such uses and purposes the primary and preferred object is the erection and endowment of a College, for the construction and discipline whereof numerous and detailed rules and directions are prescribed or recommended in said will, the site of which college was originally fixed by the said will on a certain square of ground in the said City of Philadelphia, but by the last codicil to the said will, was removed to a certain country seat called Peel Hall, situate on the Ridge Road, in Penn Township, Philadelphia County, containing forty-five acres and some perches of land, which the testator, after the publication of the said original will, had purchased from one William Parker, the whole of which country seat, with the lands thereto appertaining, is expressly devoted by the said codicil to the purpose of constituting the site of the said college and its appendages, in lieu of the said square of ground in the City of Philadelphia, which is consequently thrown into the residuum of the estate devised in trust as aforesaid; that the ultimate and only intent and object of said college is declared by the said will to be the

education of such a number of poor male white orphan children as can be trained in one institution ; and among other directions for the execution of the plan and management of said college, especially in regard to the particular objects and the selection of the objects of the charity which the said will imports, an intent to institute, and for whose sole and exclusive benefit such charity purports to be instituted, the testator further directs in said will that " as many poor, white male orphans, between the ages of six and ten years as the said income shall be adequate to maintain, shall be introduced into the college as soon as possible ; and for the selection of such orphans, if there be more applications for admission than vacancies, he further directs priority of application shall entitle the applicant to preference in admission, all other things concurring ; but if there be at any time more applications than vacancies, and the applying orphans shall have been born in different places, a preference shall be given, first to orphans born in the City of Philadelphia, secondly, to those born in any other part of Pennsylvania, thirdly, to those born in the City of New York, and lastly, to those born in the City of New Orleans ; without there being found in the body of said will any more certain or definite description or limitation of the objects of said charity than as herein above recited and mentioned, that the said testator, in and by his said will has appropriated in the first instance two millions of dollars out of the said residue of his personal estate, for the erection and endowment of the said college, and has directed the method of disbursing and husbanding that fund for such objects, and has in like manner dedicated the whole of the said residuum of his real and personal estate [with certain exceptions hereinafter to be mentioned] so devised to the said Mayor, Aldermen and Citizens of Philadelphia, in trust, as aforesaid, to the progressive enlargement of said college, and its establishment, so that in effect there are no other limitations to the number of orphans to be ultimately admitted into the said college, nor to the extent or cost of the said establishment, but the number and extent of the collegiate buildings and their appendages that may, from time to time, be erected within the entire area of the said forty-five acres and some perches of land, and the sum total of the said residuum of the real and personal estate as devised in trust as aforesaid, after deducting two other appropriations of the same, forming the exceptions above referred to, to wit, the sum of five hundred thousand dollars, expressly devised out of

the said residuum, to the said Mayor, Aldermen and Citizens of Philadelphia, in trust as a capital to be invested, and the yearly income thereof appropriated to certain local improvements and public conveniences, in the City of Philadelphia, enumerated under three several heads, in the twenty-second clause of said will; and then by the twenty-third clause of said will, he makes a substantial devise to the Commonwealth of Pennsylvania, of the sum of three hundred thousand dollars, for the purpose of internal improvement by canal navigation, to be paid into the state treasury by his executors, as soon as such laws shall have been enacted by the constituted authorities of said commonwealth as shall be necessary, and amply sufficient to carry into effect or enable the constituted authorities of the City of Philadelphia, to carry into effect the several local improvements in that city, specified in the said twenty-second clause of the will, and recapitulated in the said twenty-third clause, without any designation of the particular fund out of which the last mentioned sum shall be paid, though from the next succeeding clause of said will, it may be plainly inferred, that it is to be paid out of the said residuum of his personal estate; and as it regards the remainder and residue of his personal estate, he further devises by the twenty-fourth clause of said will that the same be held in trust by the said Mayor, Aldermen and Citizens of Philadelphia, to be invested, both principal and accruing income thereof, in good securities, so that the whole, that is the invested principal and income, shall form a permanent fund, the income whereof to be applied as follows: first, to the further improvement and maintenance of said college as before directed in said will; secondly, to provide by a competent police, more effectually for the security of the persons and property of the inhabitants of said city; and thirdly, to the improvement of city property and the general appearance of the city itself, and in effect diminish the burden of taxation, &c.; all which last two appropriations of the income of the last will mentioned fund, are made in the said will, and by the last mentioned clause thereof, secondary and subordinate to the said college and its establishments, which is therein expressly declared to be the primary object of the testator: and further, the said testator, in and by his said will directed his banking establishment to be speedily settled and closed, and the balance accruing from that establishment to be paid over to his executors, and to go into the said residuum of his estate, all which will, more particularly

and at large appear, reference being had to the said last will and testament and the said other testamentary papers—copies of all which and of the probate of the same, your orator and oratrix now here produce and annex as exhibit or exhibits to this their Bill marked A, and pray that the same may be taken and referred to as part and parcel of this Bill—and your orator and oratrix are well advised, and do verily believe and so they charge, that upon due consideration of the contents of the said will, and the sum and substance and true effect of its various provisions, it appears that no part or parcel whatever of the said residuum of the real estate so devised to the said Mayor, Aldermen and Citizens of Philadelphia, in trust as aforesaid, is dedicated or in any manner devised or appropriated by the said will to any use, purpose or object whatever, but to the erection, establishment and endowment of a college for the education of orphan children as aforesaid; and that no part or parcel of the said residuum of the personal estate in like manner devised in trust as aforesaid, [except the said sum of five hundred thousand dollars, devised to the Mayor, Aldermen and Citizens, for the purpose of accomplishing certain objects of local improvement in the said city, and the said sum of three hundred thousand dollars devised to the Commonwealth of Pennsylvania,] is dedicated, or in any manner devised or appropriated by said will, to any other use, purpose or object than the charity connected with the establishment of said college, except it be contingently, in case that establishment do not, or be not made as it is contemplated to be, capable of absorbing the whole of said fund.

And your orator and oratrix are credibly informed and believe, and so they charge, that the value of the whole real estate left by the said testator at his death, and devisable by his said will and codicil, amount to two million dollars or upwards, and so much of the same whereof the said will purports to devise the residuum to the said Mayor, Aldermen, and Citizens, as lies within the state of Pennsylvania alone is of the value of one million four hundred thousand dollars or upwards, and that the whole of the personal estate left by the testator at his death and which has come, or will come, to the hands of his said executors to be administered, is of the value of seven million of dollars or upwards, and the residuum thereof devised, or which the said will purports to devise to the said Mayor, Alderman, and Citizens, of the value
of dollars or upwards.

And your orator and oratrix are further well advised and believe, and so they expressly charge, that the supposed devise of the residuum and remainder of the said real estate to the said Mayor, Aldermen, and Citizens of Philadelphia, in trust as aforesaid, is void for want of capacity in such supposed devisee to take lands by devise, or if capable of taking generally by devise for their own use and benefit, for want of a capacity to take such lands as devisees in trust; and so that the whole of the lands, supposed to be devised to the last named defendants in trust as aforesaid, have, for want of good and effectual devise of the same, descended to the heirs at law of the said testator, Stephen Girard. According to the laws of Pennsylvania, prescribing the course of descents, and to the treaty stipulations between France and the United States, according as such laws and treaty stipulations respectively affect the rights of such of the said heirs as are citizens of the said state, or of such as are aliens and French subjects or citizens; and further, that whatever be the capacity of the said last named defendants to take lands by devise in trust, the objects of the charity for which the said lands are so devised in trust as aforesaid, are altogether indefinite, vague, and uncertain, and so no trust is created by the said will that is capable of being executed or of being cognizable at law or equity, nor any trust estate devised that can vest at law or equity in any existing or possible, *cestue-que* trusts; so that the only trust upon which the said last mentioned defendants can hold the said residuum of the said real estate, (if they be capable of holding the same upon any trust,) is a trust for the alien and citizen heirs of the said testator, Stephen Girard, according to their respective rights of inheritance and succession; and further, that the whole residue of the personal estate supposed to be devised by the said will to the last mentioned defendants, in trust for the objects of charity aforesaid, in like manner result to the next of kin of the said testator, Stephen Girard, both citizen and alien, according to their several distributive rights, by reason of the same defect of definite and certain objects of the charities for benefit of which the said devise was supposed to be made.

And your orator and oratrix further show, that the said testator left at his death the following persons, and no other, entitled, as his heirs at law and next of kin to the inheritance and succession of his real estate, and to a due distribution of his personal property, and so far as the same remain undisposed of,

or ineffectually disposed of by the said will, to wit: your orator, Etienne Girard, brother of the whole blood of the said testator, Stephen Girard, and your oratrix, François Fenelon Vidal, widow of Lanis Vidal, deceased, and niece of the said testator, Stephen Girard, (being the same person named and described by the said testator, in his said will, as his niece Victoire Fene- lon, daughter of his late sister, Sophia Girard Capayron) both of them being aliens, and citizens of France, as aforesaid, and each of them entitled, as alien and French heirs of the said testator, Stephen Girard, to one third part, or to sell and dis- pose of one third part of such undeviseed land, and each of them in like manner entitled to one third part of such personal estate as aforesaid, in a due course of distribution; and the following citizen heirs, and next of kin, to wit: Maria Antoinetta, wife of John Hemphill, Henrietta, wife of John Y. Clark, and Caroline, wife of John B. Haslam, which said Maria Antoinetta, Henri- etta, and Caroline, are daughters of John Girard, deceased, brother of said Stephen Girard, of the whole blood, and they and their said husbands, are all citizens of the said state of Penn- sylvania; and your orator and oratrix pray that they and their said husbands be made defendants to this Bill. That by a deed of Indenture, dated the 24th day of April, in the year 1833, be- tween the said John B. Haslam, and Caroline, his wife, of the one part, and Mark Richards, of the city of Philadelphia, of the other part, (a copy of which is hereto annexed marked B. as an exhibit, and which your orator and oratrix pray be taken and referred to as part of this their Bill,) the said John and Caroline, granted and conveyed to the said Mark Richards, his heirs and assigns, all and singular, the real estate belonging to her, the said Caroline, or to which she is in anywise entitled in trust to pay the rents, issue, and income thereof, to the said Caroline during life, and after her death to hold the said estate for the use of such persons or purposes as the said Caroline might, by an instrument in nature of a last will and testament, appoint, and in default of any such appointment, then in trust for such persons to whom the said real estate would have gone, according to the laws of Pennsylvania, had the said deed not been executed, and the said Caroline had died unmarried seized in fee of the premises; and your orator and oratrix aver that the said Mark Richards is a citizen of the state of Pennsylvania, pray that the said Mark Richards may be made a defendant to this Bill.

And your orator and oratrix further show that they have applied themselves, in a friendly manner, to the said defendants, requesting the said Mayor, Aldermen, and citizens of Philadelphia, to let them into the enjoyment of their respective shares of the said real estate by entering into the possession of the same, or selling and disposing of the same, and to account to your orator and oratrix for the rents, issue, and profits, of the same since the death of the said Stephen Girard; also requesting the said executors to account with your orators for the said personal estate of the said testator, Stephen Girard, which has come to their hands to be administered, &c., and to make due distribution of the surplus of the same among the next of kin of the said testator, and especially to pay and distribute to your orator and oratrix their due share and proportion of the same, and requesting the other defendants, the said citizen heirs of the said testator and their said husbands respectively, and the said Mark Richards, trustee, to join and co-operate with your orator and oratrix in a due partition and division among all the said heirs or assigns of the said real estate.

But now, so it is, may it please the court, that the said defendants, no wise regarding the said reasonable requests of your orator and oratrix, but combining and confederating together, and artfully and subtilely contriving how to aggrieve and defraud your orator and oratrix in the premises, altogether refuse to comply with such their reasonable requests and instances. And for as much as your orator and oratrix are remediless, in the premises in and by the strict rules of the common law, and can have relief in this court only, as a court of equity where matters of this sort and especially of fraud, trust, partition, distribution and account, are properly cognizable and relievable: To the end, therefore, that the said defendants may upon their several corporal oaths, full, true and perfect answers make to all and singular the matters and things in this bill contained, as fully and particularly as if the same were herein repeated and particularly interrogated; especially that they may answer and discover whether your orator Etienne Girard and your oratrix, Françoise Fenelon Vidal, be not such heirs at law and next of kin of the said testator, as they have above described themselves; and whether they and the defendants above named and described as being the citizen heirs and next of kin of said testator be not the only persons entitled to claim, as heirs at law and next of kin, of the said testator, such petition of his real estate as aforesaid, in case any such estate real or personal, should be found not disposed of, or not effectually disposed of by his said will. That the said defendants, the said Mayor, Aldermen and citizens of Philadelphia may answer and discover what real estate the

said testator died seized of; and where the same is situate, and the value of the same: more especially what real estate he died seized of within the limits of Pennsylvania—the aggregate value thereof, what of such real estate they claim or have entered into the possession of as claiming the same under the said supposed residuary devise in trust to them—the aggregate value thereof—where situate in the said state, and the yearly rents, issues and profits of the same—what monies effects, securities, assets and personal or mixed property or estate they have received from the said other defendants, the Executors as in fulfilment of such supposed residuary devise; and what has become of such real and personal estate, and the interest and income thereof; that they be compelled by the order or decree of this court to set apart and surrender to your orator and oratrix, respectively, their due shares and proportions of such real estate, and to account to them for their due shares and proportions respectively of the rents, issues and profits of the same since the death of the testator—and that the other defendants, the said citizen heirs of the said testator be decreed to quit claim and release to your orator and oratrix such parts and parcels of the said real estate as upon a due partition thereof shall be found the just shares and proportions of your orator and oratrix respectively, and that the other of said defendants, the above named executors of the said will, answer and discover what monies, stocks, securities, effects, personal property, or assets of any kind or description, were left by the said testator at his death; what and how much of the same have come to their hands to be administered, or are like to fall as assets into their hands to be administered hereafter; what has become of the same, and in whose hands the same now be, of what consisting, and how administered or disposed of since the death of said testator, and that the last mentioned defendants be decreed to account and pay to your orator and oratrix, respectively, their due shares and proportions of all such assets, present and future, and of all the increments of the same since the death of the testator, and that your orator and oratrix may have such further and other relief in the premises as to this court may seem agreeable to equity and good conscience.

May it please the court to grant them the proper and usual writ or writs of subpoena, &c. to be directed to the Mayor, Aldermen, and Citizens of Philadelphia—to the said Timothy Paxson, Thomas P. Cope, Joseph Roberts, Wm. J. Duane and John J. Barclay, Executors as aforesaid—to the said Mark Richards, Trustee as aforesaid—and to the said John Hemphill and Maria A. his wife, John Y. Clark and Henrietta his wife, and John B. Haslem and Caroline his wife—commanding them severally and respectively, to be and appear at a certain day and under a certain pain therein to be specified, ^{and} personally to be and appear before your honors in this honorable court;



and then and there to answer all and singular the premises aforesaid and to stand to perform and abide such order, direction and decree therein, as to your honors shall seem meet; and your orator and oratrix shall ever pray, &c. &c.

THOMAS KITTERA,
Solicitor for Complainants.
JAMES M. BROOM,
Solicitor for Etienne Girard.

Filed August 26th, 1836.

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